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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,390	12/10/2004	Veronique Ferrari	264558US0PCT	5690
22850 7590 05/27/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER MOORE, MARGARET G				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
05/27/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/517,390

Applicant(s)

FERRARI ET AL.

Examiner

Margaret G. Moore

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 to 69, 75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 to 43, 51 to 69, 75 is/are rejected.
- 7) ☒ Claim(s) 44 to 50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/10/08 has been entered.
2. The Examiner has reviewed application 11/898,093. No ODP rejection has been made over this application at this time since none of the claims in '093 teach or encompass the specific non-polymeric organogelling agents found in claim 1.
3. Applicants' amendment and arguments filed 3/10/08 have been considered. The Examiner notes that the arguments do not appear to address any of the specific prior art rejections made in the final office action of 11/8/07. For instance, the arguments do not address the Examiner's obviousness position regarding a cosmetic composition other than a deodorant. As such, as further elaborated below, the prior art rejections are maintained from the previous office action.
4. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The basis for this percentage (for instance weight %, volume %, etc.) is not defined, rendering this limitation indefinite.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 69 is rejected under 35 U.S.C. 102(e) as being anticipated by Cai et al.

This rejection is maintained from the previous office action. Applicants have not amended this claim such that it includes the pigment requirement found in claim 1. In addition, applicants fail to provide a separate and distinct traversal for this claim. Note that applicants' traversal is based on the newly added pigment requirement. As such the Examiner maintains that this claim is anticipated by the teachings in Cai et al. This rejection is maintained from before.

7. Claims 1 to 43, 51 to 68 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cai et al.

This rejection is maintained from the previous office action. Applicants' response did not specifically traverse this rejection rationale.

Applicants have included the requirement of a pigment in an amount to provide a coloring effect to keratin materials to the claimed compositions in an effort to distinguish the claims from the prior art. While this does overcome the anticipation rejection, since patentees indicate that the antiperspirant prepared therein is clear, the skilled artisan would have found this limitation to have been obvious.

The Examiner notes that while antiperspirants are the preferred form of the cosmetic composition in Cai et al., patentees are by no means limited thereto. See column 1, lines 51 and on. For instance, the cosmetic composition in Cai et al. can be a sunscreen and contain sunscreen active materials. It is extremely well known in the art that zinc oxide provides both coloring effects and UV absorbing properties in sunscreen compositions. The skilled artisan would have found the addition of such a known additive to the composition in Cai et al. to have been obvious in an effort to obtain the known benefits and properties thereof.

In addition, among the benefits and properties associated with the cosmetic composition of Cai et al. are improved clarity and improved degree of structural integrity which allow for improved application (column 1, lines 15 - 20, column 4, lines 18 and

on). Certainly from the teachings in Cai et al., one realizes that it results in an improved "stick" form of cosmetic. Since Cai et al. clarify that the composition therein is not limited to antiperspirants, one would realize its usefulness in other "stick" type of cosmetics. From this, an obvious "stick" product would be lipstick since it is required to be in stick form. Note too that the application step in column 29, lines 40 and on, are consistent with the step of applying lipstick. Improved application and reduced cracking and crumbling are desirable properties in lipstick. In addition an otherwise clear composition (with the exception of the desired pigment) would be beneficial in a lipstick in an effort to reduce undesired coloring, to ensure that accurate coloring is achieved and to avoid conflicts between the intended coloring and any color present in the carrier composition. Since the skilled artisan would have found the use of the stick cosmetic composition in Cai et al. as a lipstick to have been obvious, the addition of necessary pigments would correspondingly have been obvious. In this manner the instant claims are rendered obvious.

Please note that column 25, line 14, teaches the preparation of a product with color. This also provides motivation to add a pigment in an amount such as claimed since the resulting product would be a product with color.

The Examiner notes that applicants do not address specific dependent claims and from this the Examiner assumes that applicants rely on the pigment limitation in the independent claims as distinguishing these claims from the prior art. The Examiner will, however, address some specific dependent claim limitations.

From column 17, lines 30 to 35, it follows that additives, which would include a pigment, are preferably present in the oil phase. From this the skilled artisan would have found the selection of a hydrophobic particle obvious to provide stability in the oil phase. This renders obvious the limitations of claims 10 and 11.

For claims 42, 43, 51 to 53 and 75, see the co-gellants taught on the top of column 18. These are present in an amount and a mass ratio meeting claims 54 to 56.

For claims 12 and 60, note the many amphiphilic surfactants found on column 26, lines 30 and on.

Art Unit: 1796

8. Claims 44 to 49 are objected to as depending upon a rejected base claim but containing allowable subject matter. Cai et al. fail to teach or suggest these particular gelling agents.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-272-1090. The examiner can normally be reached on Monday and Wednesday to Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Margaret G. Moore/
Primary Examiner, Art Unit 1796

mgm
5/21/08